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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,321

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Ralf Grobleben

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

WILKENS, JANET MARIE

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

12/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/567,321	Applicant(s) GROBLEBEN ET AL.	
	Examiner Janet M. Wilkens	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 18-20 and 22-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 18, 19, 22-27 and 29-37 is/are rejected.
- 7) ☒ Claim(s) 20 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 10, 2008 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For claim 30, it is unclear whether or not the first and second supports are to be claimed in combination with the shelf base. These features are first claimed in "for"/intended use statements and then are later positively claimed ("in said extension and retraction directions of the first support and the second support"). Also for claim 30, it is unclear how the rails are both secured and not secured along the same edges. Note: in the last phrase of the claim, it should be stated that the rails are not secured along the other of the front and rear edges of the plate.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15,18, 22, 24, 25, 27 and 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Whalen (2,103,885). Whalen teaches a shelf base (Fig. 3) comprising: a plate (26), lower open ended retaining rails (29-32) extending along a lower side of the plate and upper retaining rails (17-21) extending along the upper side of the plate (for claim 30). The rails are attached together by the plate, the lower rails being displaceably connected (see dashed lines in Fig. 2) via members (39-42) and are retained on the plate via members (53,55). The rails accommodate shells/holders/supports (74,83). Also the plate has no apertures adjacent the rails.

Claims 30, 32, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Verchere (5,036,990). Verchere teaches a shelf base (Fig. 1) comprising: a solid plate (40), lower open ended retaining rails (28,35) extending along a lower side of the plate between its front and rear edges and upper retaining rails (27,34) extending along the upper side of the plate between its front and rear edges. The rails are attached together along/across the front/rear edge (edges being relative) of the plate via members/guide profiles (29 and corresponding member between 34,35 that spans the width of the edge) and are not attached together at the opposite edge.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whalen in view of Avery (2,018,002). As stated above, Whalen teaches the limitations of claim 15, including a shelf base having rails that accommodate shells/holders/supports (74, 83). For claim 26, Whalen fails to teach that the support includes a base plate with ribs having indentations. Avery teaches a support (32) that includes a base plate with ribs having indentations (See Fig. 3). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the base of Whalen by using an alternate support therein, i.e using the support of Avery instead of the support presently used, depending on the type of items to be stored in the base. The support of Avery accommodating bottles in a secure manner.

Claims 15,18,19, 22-25, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hearst (2,450,337) in view of Frank (5,348,207). Hearst teaches a shelf base (Fig. 2) comprising: a plate (11) and tiltable upper and lower drawer units attached together and to the plate via a guide profile/clip (15) and housing walls. For claim 15, Hearst fails to teach upper and lower rails. Frank teaches a tiltable drawer (17) using rear open ended rails (19, 21). The front of the rails includes a flange/stop (see Fig. 1b). It would have been obvious to one having ordinary skill in the art at the

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time of the invention to modify the base of Hearst by adding rails between the drawers and housing walls, such as is taught by Frank, to provide a means between the housing and drawers that would allow tilting of the drawers while not allowing easy removal of the drawers from the housing. The rails of the upper drawer being upper rails and the rails of the lower drawer being lower rails; these rails being removed/displacable on the drawers. The drawers constituting shells/holders/supports capable of holding various items including cans, eggs, etc.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Verchere in view of Hearst (2,450,337). As stated above, Verchere teaches the limitations of claim 30, including a solid plate (40). For claim 33, Verchere fails to specifically teach a glass plate. Hearst teaches a glass plate (11) used as a shelf. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the plate of Verchere by using specifically a glass plate therein, such as is taught by Hearst, for aesthetic reasons, so that items below the plate can be viewed, etc.

Allowable Subject Matter

Claims 20 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 36 and 37 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments October 10, 2008 have been fully considered but they are not persuasive.

Addressing the arguments concerning Whalen'885: first, the examiner contends that Whalen meets the limitations of claims 15 and 30. It should be noted that the plate is considered member 26 and the rails are the rails members 17-21 and 29-32. Shelf 8 is not being considered the plate as stated in the arguments and rails 20 and 21 are not the only rails being considered the rails. Second, the lower and upper (for claim 30) rails of Whalen do extend along lower and upper sides of their respective plates as shown in Figs. 3. The rails and plates do not have to be the same length/depth as implied by the arguments, they only have to extend there along. Furthermore, the terms front and rear are relative, therefore the end portions of rails 17-21 and 29-32 adjacent the plate 26 can be consider the rear ends (for claim 29) and the front ends the ends remote from the plate and not attached thereto (for claim 30). Third, as stated above, limitations found in intended use/"for" statements have been given no weight in the claims. Therefore, the supports are not being positively claimed. Finally, as for the dependent claims, it is argued that Whalen teaches all of the limitations found in the above stated claims (see art rejections).

As for the Hearst reference: Although the Hearst reference is used as a base reference in a 103 rejection, no direct arguments have been made regarding this reference and its correlation with specific claims limitations.

Finally, it was found that the reference of Verchere meets the limitations of claims 30, 32, 34 and 35 alone and with Hearst for claim 33. See art rejections above.

This is a RCE of applicant's earlier Application No. 10/567,321. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Janet M. Wilkens/
Primary Examiner, Art Unit 3637

Wilkens
December 8, 2008